

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following remarks.

I. Status of the Claims

Claim 2 is amended to specify that the isolated nucleic acid molecule comprises a polynucleotide having SEQ ID NO: '47 or a functional variant thereof having at least 95% identity to SEQ ID NO: 47, and the polynucleotide and functional variant confer vascular-preferred polynucleotide transcription. Support for the amendment to claim 2 can be found, *inter alia*, in claims 1 and 3 as originally filed.

Claim 4 is amended to specify that the isolated polynucleotide comprises a sequence which is complementary to or a reverse complement of the sequences recited in claim 2, and is at least 30 nucleotides in length, and confers vascular-preferred polynucleotide transcription. Support for the amendment to claim 4 may be found, *inter alia*, at page 7 of the published application, paragraph [0071].

Claim 3 is cancelled without prejudice to or disclaimer of the subject matter therein. Claims 1 and 7-20 were previously cancelled without prejudice to or disclaimer of the subject matter therein. No new claims are being added. Thus, claims 2 and 4-6 are currently pending in the application.

These amendments do not introduce new matter into the application. Applicants respectfully urge the entry of these amendments after final because they will not require a new search and are believed to place the application in condition for allowance, or at least in better condition for appeal.

II. The Rejections Under 35 U.S.C. § 112, First Paragraph

A. Written Description

The Office Action, at pages 2-5, maintains the rejection of claims 2-6 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. Specifically, the Office Action states that the specification does not adequately describes the genus that encompasses the functional variants having at least 90% sequence identity to SEQ ID NO: 47, as well as the complementary sequences and reverse complements to SEQ ID NO: 47 and its functional variants. Applicants respectfully traverse this ground of rejection.

Solely to advance prosecution, and not in acquiescence with the rejection, Applicants have amended claim 2 to recite an isolated nucleic acid molecule comprising a polynucleotide of SEQ ID NO: 47 or a functional variant thereof having at least **95% identity** to SEQ ID NO: 47, that **confer vascular-preferred polynucleotide transcription**. Further, Applicants have amended claim 4 to specify that the complementary or reverse complement sequences to SEQ ID NO: 47 and its variants are at least **30 nucleotides in length** and **confer vascular-preferred polynucleotide transcription**.

Thus, the sequences claimed in the present application are defined both by their structure, as being at least 95% identical to SEQ ID NO: 47, and by their function, as conferring vascular-preferred polynucleotide transcription. The specification provides extensive description of polynucleotides having a sequence which is 95% identical to SEQ ID NO: 47, as well as complementary and reverse complements thereto. *See Paragraphs [0074] to [0079] in the published application.* Accordingly, the rejection, as applied to the amended claims, is improper. Reconsideration and withdrawal of this ground rejection is therefore respectfully requested.

B. Enablement

The Office Action, at pages 5-6, maintains the rejection of claims 2-6 under 35 U.S.C. § 112, first paragraph, because the specification allegedly does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with the claimed invention. Specifically, the Office Action alleges that the specification does not provide enough guidance with regard to variants of SEQ ID NO: 47, and the identity and location of key nucleotides and regulatory regions which might be required for the function of the variants. Applicants respectfully traverse this ground of rejection.

As stated above, with the foregoing claim 2 is amended to recite an isolated nucleic acid molecule comprising a polynucleotide of SEQ ID NO: 47 or a functional variant thereof having at least **95% identity** to SEQ ID NO: 47, that **confer vascular-preferred polynucleotide transcription**. Further, claim 4 is amended to specify that the complementary or reverse complement sequences to SEQ ID NO: 47 and its variants are at least **30 nucleotides in length** and **confer vascular-preferred polynucleotide transcription**.

The sequence of SEQ ID NO: 47 is provided in Table 6 and in the sequence listing in the application. The specification provides extensive disclosure of functional variants that are 95% identical to SEQ ID NO: 47 and confer vascular-preferred polynucleotide transcription, and methods of producing and using these variants. *See paragraphs [0124] to [0135] in the published application.*

Clearly, the specification provides enough disclosure to enable one skilled in the art to make and/or use the invention claimed in the present application. Thus, the claimed invention is fully enabled. As such, reconsideration and withdrawal of this ground of rejection is respectfully requested.

III. The Rejections Under 35 U.S.C. § 112, Second Paragraph

The Office Action, at pages 6-7, rejects claims 2-6 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Specifically, claim 2 is rejected as being dependent from a cancelled claim. Applicants respectfully traverse this ground of rejection.

With the foregoing, claim 2 is now an independent claim and is amended to include the limitations of claim 1, which was previously cancelled without disclaimer or prejudice. Accordingly, the rejection is moot. Reconsideration and withdrawal of this ground of rejection is therefore respectfully requested.

II. The Rejection Under 35 U.S.C. § 102(b)

The Office Action, at page 7, maintains the rejection of claim 4 under 35 U.S.C. § 102(b) as allegedly being anticipated by Polvere *et al.* (Genbank Accession No. U88240, 1997) (“Polvere”). The Office Action asserts that Polvere allegedly teaches a sequence comprising at least 20 contiguous bases of SEQ ID NO: 47, and is therefore inherently complimentary to SEQ ID NO: 47. Applicants respectfully traverse this ground of rejection.

With the foregoing, claim 4 is amended to recite complementary or reverse complement sequences to SEQ ID NO: 47 and its variants that are at least ***30 nucleotides in length and confer vascular-preferred polynucleotide transcription.***

Polvere fails to disclose or suggest a complementary or reverse complement sequence to SEQ ID NO: 47 and its variants that is at least 30 nucleotides in length and confers vascular-preferred polynucleotide transcription. Thus, Polvere fails to anticipate the claimed invention.

For at least this reason, the rejection of claim 4 under 35 U.S.C. § 102(b) is improper. Reconsideration and withdrawal of this ground of rejection is therefore respectfully requested.

CONCLUSION

Applicants believe that all of the stated grounds of rejections have been properly traversed or rendered moot. The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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